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08/661,834	06/11/96	KRONZER	J 45751USA6C

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EXAMINER

LEWIS, A

ART UNIT

PAPER NUMBER

3761

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12/07/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/661,834

Applicant(s)

Joseph P. Kronzer et al.

Examiner

A. J. Lewis

Group Art Unit

3761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 9/15/99
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 25-37 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 25-37 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 25-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, each of claims 25 and 32 recites the broad recitation "...at least 40 weight percent thermally bonding fibers...", "...at least 10 weight percent of the fibers in the nonwoven layer being bicomponent fibers...", "...a surface fuzz value of not less than 7.5...", and each of the claims also recites "...with the provisio that if the bicomponent fiber

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content is 85 weight percent or greater, then the surface fuzz value exceeds 8.0.” which is the narrower statement of the range/limitation.

In each of claims 25 and 32, “...the nonwoven layer...” in line 6 and 5 respectively of each claim, should read --the nonwoven fibrous layer-- in order to properly refer back to the initial recitation of “...a nonwoven fibrous layer...” in line 4 and 3 respectively of each claim. Otherwise, “...the nonwoven layer...” in line 6 of claim 25 and in line 5 of claim 32 lacks antecedent basis.

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2. Claims 25 and 32 each recites the limitation "...the fibers..." in line 6 and in line 5 respectively. There is insufficient antecedent basis for this limitation in the claim.

3. Claims 25-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 25, lines 5 and 6 recite "...and optionally (ii) staple fibers,...". It is not clear whether applicant intends to claim the combination of a fibrous filtration face mask and staple fibers. The use of the language "...and optionally..." renders the scope of the claim unclear with respect to whether applicant intends to claim the combination or not. The conjunction "...and..." is seen as a means for reciting the combination whereas the word "...optionally..." is seen as a means for reciting elements alternatively (i.e. consistent with the use of the word "...or...").

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 25-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dyrud et al.('619).

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As to claim 25, Dyrud et al.('619) disclose a fibrous face mask (figs.1-3) for filtering contaminants and/or particulate matter, which comprises: a means (12) for securing the mask to the face of a wearer; and a non-woven fibrous layer (disclosed as a shaping layer) attached (col.3, lines 13-15) to the securing means and containing at least about 40% weight thermally bonding fibers based on the weight of the in the non-woven fibrous layer, at least about 10% weight of the fibers in the non-woven layer being bicomponent fibers, and optionally staple fibers, the non-woven fibrous layer being molded in a cup-shaped configuration. As for the claimed weight ratios of at least 40% weight thermally bonding fibers and at least 10% weight bicomponent fibers in the non-wovwn layer, applicant is referred to Dyrud et al. (col.4, lines 29-37) which discloses weight ratios ranging from 0% staple fibers:100% bicomponent fibers to 75% staple fibers:25% bicomponent fibers, a range which includes the claimed values of 40% thermally bonding fibers and 10% bicomponent fibers.

As for the claimed "surface fuzz value" of not less than 7.5, since Dyrud et al. disclose thermally bonding fibers having bicomponent fibers as well as staple fibers (col.4, lines 29-37)in a plurality weight percent ratios which includes 40 wt.% thermally bonding fibers and at least about 10 wt.% bicomponent fibers, it is submitted that the process of molding which includes the use of heat as disclosed by Dyrud et al. would have resulted in a shaping layer having a surface fuzz value including one which is not less than 7.5.

As to claim 26, Dyrud et al. as discussed above disclose a wide range of weight percent of fibers making up the non-woven layers which include the claimed weight per cent of fibers.

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Moreover, Dyrud et al. disclose a plurality of non-woven layers having filtration layer of blown microfibers therebetween (fig.2 and col.6, line 63-col.7, line 20).

As to claims 27-31, and new claims 33-37, the particular values of weight per cent of the bicomponent fibers in Dyrud et al. can be arrived at through mere routine experimentation and observation with no criticality seen in the particular values being claimed. The surface fuzz values resulting from the heated molding process disclosed by Dyrud et al. and a given proportion of specific fibers would result in a shaping layer having a plurality of surface fuzz values in dependence upon the particular selection of fibers.

Claim 32 with the exception of the optional inclusion of staple fibers is substantially equivalent in scope to claim 25 and is included in Dyrud et al. for the reasons set forth above with respect to claim 25.


***Response to Arguments***

6. Applicant's arguments with respect to claims 25-37 have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Lewis whose telephone number is (703) 308-0716.

Aaron J. Lewis

December 5, 1999

  
Aaron J. Lewis  
Primary Examiner